



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 19 2015

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Article Number: 7015 0640 0007 6347 8248

Honorable Ras J. Baraka, Mayor
City of Newark
City Hall Room 200
920 Broad Street
Newark, New Jersey 07102

Re: **Administrative Docket No. CWA-02-2015-3068**
City of Newark Municipal Separate Storm Sewer System (“MS4”)
NJPDES ID No. NJG0151076
Clean Water Act Information Request and Administrative Compliance Order

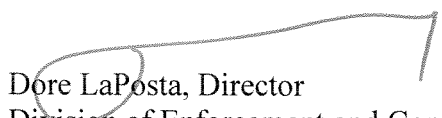
Dear Mayor Baraka:

The United States Environmental Protection Agency (“EPA”), Region 2, has made a finding that the City of Newark (“Respondent”) is in violation of the Clean Water Act (33 U.S.C. § 1251 et seq) (“CWA” or “Act”) for its failure to comply with the terms and conditions of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) Tier A Municipal Stormwater General Permit (“Tier A Permit” or “Permit”). Enclosed is an Information Request and Administrative Compliance Order (together the “Order”), Docket No. CWA-02-2015-3068, issued pursuant to Sections 308 and 309 of the CWA, which details the findings.

Please acknowledge receipt of this Order by signing the acknowledgement page and returning the acknowledgement page by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

Also enclosed is the Audit Report for the Municipal Separate Storm Sewer System (“MS4”) audit conducted by EPA on April 29 and 30, 2015. If you have any questions regarding the enclosed Order, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section, at (212) 637-4268.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Marcedius T. Jameson, Administrator, Water and Land Use Enforcement, NJDEP
Aubrey Beckles, Senior Engineer, DWSU, City of Newark (becklesa@ci.newark.nj.us)
Francisco J. Brillhante, HDR (Francisco.Brillhante@hdrinc.com)
Katherine L. Drury, HDR (katherine.drury@hdrinc.com)
Theophilus Ashie, Environmental Specialist, NJDEP (Theophilus.Ashie@dep.nj.gov)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

City of Newark
920 Broad Street
Newark, New Jersey 07102

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

RESPONDENT

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2015-3068

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the “Order”) is issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act (“CWA”), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New Jersey Department of Environmental Protection (“NJDEP”) is the agency with the authority to administer the federal NPDES program in New Jersey pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A New Jersey Pollutant Discharge Elimination System (“NJPDES”) permit is required to be issued by the NJDEP to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.
4. “Municipality” is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

5. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged to water.
7. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
9. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.
10. Section 309(a) of the CWA, 33 U.S.C. § 1319(a) authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems (“MS4s”).
12. Section 402(p)(3)(B) of the CWA, 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from a MS4 shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers and shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.
13. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for stormwater discharges, including the following:
 - a. 40 C.F.R. § 122.26(b)(8), defines an MS4 as a “conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...”;

- b. 40 C.F.R. §§ 122.26(a)(1)(iv) and 122.26(d) require the operator of a discharge from a medium MS4 to apply for a jurisdiction-wide or system-wide permit;
 - c. 40 C.F.R. § 122.26(b)(7)(i) defines “medium municipal separate storm sewer system,” in part, as being located in an incorporated place with a population of 100,000 or more but less than 250,000;
 - d. 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” municipal separate storm sewer systems; and
 - e. 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
14. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
15. The term “MS4 General Permit” means the NJDEP Tier A Municipal Stormwater General Permit, as defined by the present general permit number, NJ0141852. The current Tier A Municipal Stormwater General Permit, NJ0141852, became effective on March 1, 2009 and expired on February 28, 2014 and has since been administratively extended until issuance of a new Tier A Municipal Stormwater General Permit. Prior to the current and administratively extended permit, NJDEP issued the Tier A Municipal Stormwater General Permit on April 4, 2004, modified it on September 1, 2005 and it stayed in effect until it expired on February 28, 2009.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. The City of Newark (“Respondent”) is a municipal corporation chartered under the laws of the State of New Jersey, and as such, the Respondent is a “person,” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an “incorporated place” as that term is defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns and operates the MS4, located in Newark, New Jersey, and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Respondent’s MS4 is a small MS4 located in an urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. Respondent’s MS4 includes at least seventeen (17) outfall pipes, which are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14) and discharges stormwater, which is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to the Elizabeth River conveyed through Vailsburg Ditch, the Elizabeth Channel/Newark Bay conveyed through Waverly Ditch and directly to the Passaic River and Newark Bay. The Passaic River, Newark Bay, Elizabeth River and the Elizabeth Channel are traditional “navigable waters” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and as such, the Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

5. In March 2004, Respondent submitted a Request for Authorization (“RFA”) to NJDEP and subsequently received authorization under the MS4 General Permit pursuant to permit identification No. NJG0151076, and has been covered under the conditions and limitations in the MS4 General Permit at all relevant times addressed by this Administrative Compliance Order.
6. The MS4 General Permit authorizes Respondent to discharge pollutants from MS4 outfalls to the Passaic River, Vailsburg Ditch, Waverly Ditch and Newark Bay, under the conditions and limitations prescribed in the MS4 General Permit.
7. On April 29 and 30, 2015 the EPA, accompanied by NJDEP, conducted an audit of the Respondent’s MS4.
8. Based on the audit findings, the EPA finds that the Respondent has failed to comply with the CWA and the conditions and limitations of the Tier A Municipal Stormwater General Permit, including but not limited to the following:
 - a. Part I.E.2.a of the MS4 General Permit states that the Stormwater Pollution Prevention Plan (“SPPP”) shall include, at a minimum, all of the information and items identified in Attachment A of the MS4 General Permit. Attachment A of the MS4 General Permit states that the SPPP shall identify and discuss each of the Statewide Basic Requirements (“SBRs”) and Best Management Practices (“BMPs”) required by the MS4 General Permit. Part I.E.2.a.i of the MS4 General Permit requires Tier A Municipalities to have revised and implemented a SPPP on or before June 1, 2009 to incorporate additional SBRs, BMPs, and other changes required by the renewal of the Tier A permit. The City provided EPA with a copy of its SPPP dated December 16, 2010, which did not identify and discuss the stormwater facility maintenance program (SBR 7), a facility inventory (SBR 8), regular inspections (SBR 8), Standard Operating Procedures (“SOPs”) (SBR 8), and employee training (SBR 9). Therefore, Respondent violated Part I.E.2.a of the MS4 General Permit.
 - b. Part I.F.3.a.v of the MS4 General Permit states that Tier A Municipalities shall ensure adequate long-term operation and maintenance of post-construction BMPs. Additionally, Parts I.F.3.c.iii – iv of the MS4 General Permit require that Tier A Municipalities ensure adequate long-term Operation and Maintenance (“O&M”) of BMPs on property owned or operated by the municipality and on property not owned or operated by the municipality [i.e., privately owned]. At the time of the audit, the Respondent did not have an inventory of privately owned or municipally owned BMPs installed in the MS4 area, did not have a written program or process to ensure proper O&M was being accomplished for privately and publicly owned BMPs, or records of inspections or maintenance performed on privately and publicly owned BMPs. Therefore, Respondent violated Parts I.F.3.a.v and I.F.3.c.iii – iv of the MS4 General Permit.
 - c. Part I.F.7.c.i of the MS4 General Permit states that Tier A Municipalities shall continue to implement a stormwater facility maintenance program for cleaning and maintenance of all municipally owned and operated stormwater facilities, including but not limited to catch basins and stormwater conveyances. At the time of the audit, the Respondent did not have a formal stormwater facility maintenance program. Specifically, the Respondent did not have an inspection schedule, did not differentiate between the combined sewer system and MS4 catch basins and Respondent did not utilize the catch basin inventory and maps available in

the computer-based Geographic Information System (“GIS”). Therefore, Respondent violated Part I.F.7.c.i of the MS4 General Permit.

- d. Part I.F.7.d.i of the MS4 General Permit states that Tier A Municipalities shall inspect all municipally owned and operated catch basins for accumulated sediment, trash, and debris; and clean those basins to remove sediment, trash, or debris (if any observed during inspection). Tier A Municipalities with less than 5,000 municipally owned and operated catch basins shall annually inspect and (to the extent noted above) clean at least 1,000 catch basins, or as many catch basins as the municipality owns and operates. At the time of the audit, the Respondent owned and operated approximately 1,810 catch basins within the MS4. However, Respondent had not annually inspected all catch basins and had not cleaned at least 1,000 catch basins for the previous five (5) years (2010 through 2014). In addition, the EPA Audit Team observed an MS4 catch basin located near the northeast corner of Wilson Avenue and Paris Street covered with trash and debris, at the time of the audit. Therefore, Respondent violated Part I.F.7.d.i of the MS4 General Permit.
 - e. Part I.F.8.c.iii of the MS4 General Permit requires that Tier A Municipalities shall implement required SOPs which are outlined in Part I.F.8.c.i of the MS4 General Permit (e.g. vehicle fueling and receiving of bulk fuel deliveries; vehicle maintenance and repair activities; and good housekeeping practices for all materials or machinery listed in the facility inventory requirements, in accordance with Attachment D of the MS4 General Permit). Section F.1 of Attachment D of the MS4 General Permit requires Tier A Municipalities to conduct regular inspections of municipal maintenance yard operations. Section D of Attachment D of the MS4 General Permit requires the City to conduct cleanups of any spills or liquids or dry materials immediately after discovery. At the time of the audit, the Respondent had not developed a facility inventory and had not conducted and documented regular inspections of municipal maintenance yard operations, in accordance with Attachment D of the MS4 General Permit. In addition, the EPA Audit Team observed numerous pollution prevention and good housekeeping deficiencies, including spills, at the City’s Department of Engineering Division of Motors Facility, and representatives were unsure where floor drains and a parking lot drain discharged to. Therefore, Respondent violated Part I.F.8.c.iii of the MS4 General Permit.
 - f. Part I.F.9.a of the MS4 General Permit requires that Tier A Municipalities conduct annual employee training to educate all municipal employees on those stormwater topics which are applicable to their job and title. At the time of the audit, Respondent had not conducted annual stormwater training for all municipal employees responsible for implementing the City’s MS4 program, including employees from the Department of Engineering, which includes the Division of Motors. Therefore, Respondent violated Part I.F.9.a of the MS4 General Permit.
9. Based upon Paragraphs 1 – 8 above, EPA finds that Respondent is in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable implementing regulations.

C. REQUESTED INFORMATION

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing the following requested information:

1. A written response with documenting photographs and maps describing and depicting each of the drainage structures indoors and outdoors at the Division of Motors Facility located at 233 Wilson Avenue, including but not limited to, catch basins, floor drains, associated piping, oil/water separators, discharge points and connections to the MS4 and sanitary sewers within **thirty (30) calendar days** of receipt of this Order.
2. A written response regarding each of the listed Areas of Concern in the enclosed Inspection Report within **sixty (60) calendar days** of receipt of this Order.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Immediately upon receipt of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt and return the acknowledgement page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1, below.
2. Respondent shall complete the following items in accordance with the schedule listed below:

Item	Completion Deadline
a. Implement the required SOPs outlined in Part I.F.8.c.i of the MS4 General Permit at municipal facilities and operations within the MS4, including but not limited to cleanups of any spills or liquids at the Division of Motors Facility and the deficiencies noted in Section 2.5.3 of the enclosed Audit Report.	Implement immediately
b. Develop and implement a stormwater facility maintenance program for the cleaning and maintenance of all municipally owned and operated stormwater facilities in the MS4, including but not limited to an inspections of all catch basins and stormwater conveyances in the MS4 area, as required by Part I.F.7.c.i of the MS4 General Permit. The program shall include, documentation and tracking of the annual inspection schedule of all MS4 catch basins and the annual cleaning of at least 1,000 MS4 catch basins, specifically an MS4 catch basin located near the northeast corner of Wilson Avenue and Paris Street that was covered with trash and debris at the time of the audit, as required by Part I.F.7.d.i of the MS4	Within thirty (30) days of receipt of this Order

General Permit. Submit the written program to EPA, with a copy to NJDEP.	
c. Develop and submit to EPA, with a copy to NJDEP, an inventory or map of post-construction BMPs on property owned or operated by the municipality and property not owned or operated by the municipality, as required by Part I.F.3.a.v of the MS4 General Permit.	Within thirty (30) days of receipt of this Order
d. Develop and implement a written program or process to ensure proper O&M for privately and municipally owned post-construction BMPs and maintain records of inspections and maintenance, as required by Part I.F.3.c.iii – iv of the MS4 General Permit. Submit the written program to EPA, with a copy to NJDEP.	Within forty-five (45) days of receipt of this Order
e. Develop and implement a plan to conduct regular inspections of all municipal maintenance yard operations, including a facility inventory, as required by Section F.1 of Attachment D of the MS4 General Permit. The plan shall include identification of personnel qualified to do the inspection, the facilities to be inspected, the required SOPs that will be checked during an inspection, documentation for each inspection and necessary corrective actions. Submit the written plan to EPA, with a copy to NJDEP.	Within forty-five (45) days of receipt of this Order
f. Develop and implement an annual employee training program that ensures that all municipal employees are trained on those stormwater topics which are applicable to their job and title, including but not limited to Department of Engineering employees, as required by Part I.F.9.a of the MS4 General Permit. Submit the written program to EPA, with a copy to NJDEP.	Within sixty (60) days of receipt of this Order
g. Develop and implement a revised SPPP that incorporates all SBRs, BMPs, and other elements required by Part I.E.2.a of the MS4 General Permit, including but not limited to SBR 7 – Stormwater facility maintenance program, SBR 8 – Facility inventory, regular inspections and SOPs, SBR 9 – Employee Training. Submit the revised SPPP to EPA, with a copy to NJDEP.	Within sixty (60) calendar days of receipt of this Order
h. Submit to EPA, with a copy to NJDEP, written and photographic documentation of all the activities undertaken, implemented programs and costs associated with each compliance item in this Order	Within sixty (60) days of receipt of this Order

along with a signed certification statement that the SPPP, SOPs, BMPs, stormwater facility maintenance program, post-construction O&M, employee training program and other required programs have been fully implemented, in accordance with the requirements of the MS4 General Permit and this Order.	
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E. GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

Marcedius T. Jameson, Administrator
Water and Land Use Enforcement
New Jersey Department of Environmental Protection
Mail Code 401-04F
401 East State Street
P.O. Box 420
Trenton, New Jersey 08625-0420

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

2. Immediately upon receipt of the original copies of this Order, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt return the acknowledgement page to the Chief, Water Compliance Branch, in the enclosed envelope to the address listed in paragraph E.1.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.

4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is also given that failure to complete the provisions ordered in Section C, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent's liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: AUGUST 19, 2015

Signed: _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

City of Newark
920 Broad Street
Newark, New Jersey 07102

Proceeding pursuant to Sections 308(a) and 309(a)
of the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

RESPONDENT

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2015-3068

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an authorized representative of the Respondent,

with the title of, _____, do hereby acknowledge the receipt of copy of the

ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2015-3068.

DATE: _____

SIGNED: _____



United States Environmental Protection Agency
Washington, D.C. 20460
Water Compliance Inspection Report

Form Approved.
OMB No. 2040-0057

Section A: National Data System Coding (i.e., PCS)

Transaction Code	NPDES	yr/mo/day	Inspection Type	Inspector	Fac Type
1 N 2 5 3 N J 0 1 5 1 0 7 6 11 12 1 5 0 4 2 9 17 18 > 19 R 20 1					
Remarks					
2					
66					
Inspection Work Days	Facility Self-Monitoring Evaluation Rating	B1	QA	Reserved	
6 3 69 70 71 72 73 74 7					
80					

Section B: Facility Data

Name and Location of Facility Inspected (for industrial users discharging to POTW, also include POTW name and NPDES permit number)	Entry Time/Date	Permit Effective Date
City of Newark - Municipal Separate Storm Sewer System 920 Broad Street Newark, NJ 07102	8:00 AM 04/29/2015	03/01/2009
	Exit Time/Date	Permit Expiration Date
	3:00 PM 04/30/2015	
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s)	Other Facility Data	
Mr. Aubrey Beckles, Senior Engineer, DWSU City of Newark 239 Central Avenue, Newark, NJ 07102		
Name, Address of Responsible Official/Title/Phone and Fax Number(s)		
Honorable Ras J. Baraka, Mayor, City of Newark - Municipal Separate Storm Sewer System, City Hall Room 200, 920 Broad Street, Newark, NJ 07102		
Contacted		
x Yes No		

Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

<input checked="" type="checkbox"/> Permit	<input type="checkbox"/> Flow Measurement	<input checked="" type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input checked="" type="checkbox"/> Records/Reports	<input type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Sludge Handling/Disposal	<input checked="" type="checkbox"/> Pollution Prevention
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input type="checkbox"/> Multimedia
<input type="checkbox"/> Effluent/Receiving Water	<input type="checkbox"/> Laboratory	<input checked="" type="checkbox"/> Storm Water	<input type="checkbox"/> Other:

Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklists as necessary)

See attached audit report for inspection findings.

Name(s) and Signature(s) of Inspector(s)	Agency/Office/Phone and Fax Numbers	Date
Kimberly McEathron, Physical Scientist	EPA/DECA-WCB/ (212) 637-4228 FAX: x3953	7/30/2015
Signature of Management Q/A Reviewer	Agency/Office/Phone and Fax Numbers	Date
Justine Modigliani, P.E., Compliance Section Chief	EPA/DECA-WCB/ (212) 637-4268 FAX: x3953	8/3/15



U.S. Environmental Protection Agency
Office of Compliance and Enforcement
1200 Pennsylvania Avenue, NW
Washington, DC 20460

U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

**MUNICIPAL SEPARATE STORM
SEWER SYSTEM (MS4)
COMPLIANCE AUDIT**

**CITY OF NEWARK,
NEW JERSEY**

Report Date: June 27, 2015

Field Activity Dates: April 29 and 30, 2015

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1.0 Introduction

On April 29 and 30, 2015, the U.S. Environmental Protection Agency (EPA) Region 2 and an EPA contractor, PG Environmental, LLC, (hereinafter, collectively, the EPA Audit Team) conducted an audit of the municipal separate storm sewer system (MS4) program of the City of Newark, New Jersey (City). Discharges from the City's MS4 are regulated under the New Jersey Department of Environmental Protection (NJDEP) *Tier A Municipal Stormwater General Permit Final – NJPDES Permit Renewal – Existing Permittee*, Permit No. NJ0141852 (hereinafter, Permit; see [Appendix A](#)), effective March 1, 2009 as well as the New Jersey Administrative Code (NJAC). The Permit was set to expire on February 28, 2014, but it has been administratively extended. The City initially submitted its request for authorization for coverage under the Permit in March 2004 (Registration No. NJG0151076) and has been developing its MS4 program since that time.

1.1 Permit and Stormwater Management Plan

Part I.E.1.a of the Permit requires the City to “develop, implement, and enforce a stormwater program.” Additionally, Part I.E.2.a of the Permit requires the City to develop and implement a stormwater pollution prevention plan (SPPP) that describes the City's stormwater program and serves as the mechanism for the implementation of the *Statewide Basic Requirements* (SBRs). A copy of the City's SPPP (dated December 16, 2010) is included as [Appendix B](#).

According to the 2010 U.S. Census, the total population of the City was approximately 277,140, and the City encompassed 24.19 square miles. Geographically, the City is located in the southeast portion of Essex County, and is bordered by the Second River and the Passaic River to the north and northeast, Newark Bay to the east, and Union County to the south. City representatives estimated that the City's sewer system was approximately 80 to 90 percent combined storm and sanitary sewer and approximately 10 to 20 percent separate sewer systems.

The Permit authorizes the City to discharge stormwater runoff and certain non-stormwater flow from the City's MS4 to surface water and ground water. Discussions with City representatives and field investigations from the City's contractor, HDR, Incorporated (HDR) indicated that the Passaic River, Vailsburg Ditch (a tributary to the Elizabeth River), and Waverly Ditch (a tributary to the Elizabeth Channel/Newark Bay) are the primary receiving waters for MS4 discharges within the City.

At the time of the audit, the City's Department of Water and Sewer Utilities (DWSU) was the entity primarily responsible for administering and overseeing the City's MS4 program; other City departments as well as the City's contractor, HDR, performed some components of the program. The City had entered into a contract with HDR to operate a portion of the City's MS4 program (contract awarded on September 9, 2013). The contract period started one year after the award date, and the contract is renewed on an annual basis. The contract specifies HDR will provide *Tier A Municipal Stormwater General Permit* support and will focus on the following six tasks:

Task 1—NJDEP stormwater permit compliance audit.

Task 2—Annual report and certification.

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Task 3—Public education.

Task 4—Illicit connection inspections and elimination.

Task 5—Storm sewer outfall pipe inspection, identification, mapping and stream scour monitoring.

Task 6—Storm drain inlet labeling program management and catch basin database development.

Specific details regarding the scope of work for each task are provided in the contract. Refer to Appendix D, Exhibit 1 for pertinent excerpts from HDR's contract with the City.

1.2 Program Areas Evaluated

The audit focused on five of the SBRs described in Part I.F of the Permit:

- SBR 3 Post-construction Stormwater Management in New Development and Redevelopment.
- SBR 6 Illicit Connection Elimination and MS4 Outfall Pipe Mapping.
- SBR 7 Solids and Floatable Controls.
- SBR 8 Maintenance Yard Operations.
- SBR 9 Employee Training.

1.3 Audit Process

The purpose of the audit was to obtain information that will assist EPA in assessing the City's compliance with the requirements of the Permit, as well as the implementation status of the City's current MS4 program. The audit schedule is presented as Appendix C.

The EPA Audit Team obtained information through a series of interviews with representatives from the City's DWSU and HDR representatives, as well as representatives from other City departments/divisions such as the Department of Engineering, Division of Motors, Division of Sanitation, and the Central Planning Board, along with a series of site visits, records reviews, and field verification activities.

The following primary representatives were involved in the audit:

City of Newark Representatives:	Francisco J. Brilhante, HDR Katherine L. Drury, HDR Aubrey Beckles, Senior Engineer, DWSU Van Crossen, Manager, Division of Motors Mike Gelin, Assistant Director, DWSU Kareem Herrill, Public Works Superintendent, DWSU Kenneth Hubbard, Sewer Unit Supervisor, DWSU Ousama Mohamed, Principal Planner, DWSU Samie Shokvy, Department of Engineering Perris Straughter, Supervising Planner, Central Planning Board
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NJDEP Representative:	Theophilus Ashie, Environmental Specialist
EPA Representative:	Kimberly McEathron, EPA Region 2
EPA Contractors:	Kortney Kirkeby, PG Environmental, LLC Stephen Clark, PG Environmental, LLC

2.0 Information Obtained Regarding Compliance with the Permit

The EPA Audit Team conducted an evaluation of the City's MS4 program to obtain information that will assist EPA in assessing the municipality's compliance with the requirements of the Permit.

Prior to the audit, the EPA Audit Team formally requested that the City have specific documentation available for review at the time of the audit. On March 20, 2015, the EPA Audit Team provided the City with an inspection notification as well as a records request (hereinafter, EPA Records Request; see Appendix D, Exhibit 2) via certified mail. Prior to and during the audit the City provided the EPA Audit Team with numerous hardcopies of documents that contained information pertinent to the EPA Records Request. Not all information requested was available, and in some cases, information was found to be incomplete or missing. Where applicable, these cases have been noted in the appropriate sections of the report.

During the audit, the EPA Audit Team obtained documentation and other supporting evidence regarding compliance with the Permit and the City's implementation of the stormwater management program. Pertinent information obtained during the evaluation is presented in this report as audit observations. The presentation of audit observations does not constitute a formal compliance determination or notice of violation, but rather identifies areas of potential noncompliance. Referenced documentation used as supporting evidence is provided in Appendix D; photo documentation is provided in Appendix E.

Table 1 summarizes the EPA Audit Team's overall audit observations. Descriptions and details regarding the audit observations, as well as supporting documentation, are provided in the applicable sections of the MS4 audit report.

Table 1. Requirements of the City's NJPDES Permit (NJ0141852; Registration No. NJG0151076) and Areas of Potential Noncompliance

Statewide Basic Requirements and Permit Requirements	Potential Noncompliance
Stormwater Program and Stormwater Pollution Prevention Plan Part I.E.2.a.i of the Permit requires the City to have revised and implemented a SPPP between the effective date of the Permit (March 1, 2009) and June 1, 2009 to incorporate	1. The City's SPPP does not contain all of the information and items required in Attachment A of the Permit (Section 2.1.1). See the referenced section of this report for further discussion of this issue.

Statewide Basic Requirements and Permit Requirements	Potential Noncompliance
<p>additional information and requirements included in the new permit.</p> <p>See Section 2.1 of this report for the specific Permit references for each item of potential noncompliance.</p>	
<p>Post-construction Stormwater Management in New Development and Redevelopment</p> <p>Part I.F.3.a of the Permit requires the City to have implemented and enforced a program to address stormwater runoff from new development and redevelopment projects (including projects operated by the municipality itself) that disturb one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, and that discharge into the municipality's small MS4.</p> <p>See Section 2.2 of this report for the specific Permit references for each item of potential noncompliance.</p>	<p>1. The City had not implemented a formal program for ensuring adequate long-term operation and maintenance of post-construction stormwater BMPs (Section 2.2.1).</p> <p>See the referenced sections of this report for further discussion of these issues.</p>
<p>Solids and Floatable Controls</p> <p>Part I.F.7 of the Permit requires the City to perform monthly street sweeping where applicable, retrofit existing storm drain inlets to meet Permit standards, maintain all municipally owned stormwater facilities, clean and inspect catch basins, and implement an outfall-pipe stream-scouring remediation program.</p> <p>See Section 2.4 of this report for the specific Permit references for each item of potential noncompliance.</p>	<p>1. The City had not implemented a formal MS4 catch basin inspection and cleaning program (Section 2.4.1).</p> <p>See the referenced sections of this report for further discussion of this issue.</p>
<p>Maintenance Yard Operations (including maintenance activities at ancillary operations)</p> <p>Part I.F.8 of the Permit requires the City to store salt and other de-icing material in a permanent structure, manage vehicle washing to eliminate unpermitted discharges of wash</p>	<p>1. The City had not implemented SOPs for the required practices listed in Attachment D of the Permit (Section 2.5.1).</p> <p>2. The City had not developed an inventory for municipal maintenance yard</p>

Statewide Basic Requirements and Permit Requirements	Potential Noncompliance
<p>water, and develop applicable standard operating procedures (SOPs) for vehicle fueling, vehicle maintenance and repair, and good housekeeping practices.</p> <p>See Section 2.5 of this report for the specific Permit references for each item of potential noncompliance.</p>	<p>operations as required in Attachment D of the Permit (Section 2.5.2).</p> <p>3. The City had not implemented a municipal facility inspection program as required in Attachment D of the Permit (Section 2.5.3).</p> <p>See the referenced section of this report for further discussion of this issue.</p>
<p>Employee Training</p> <p>Part I.F.9.a of the Permit requires the City to conduct annual employee training to educate all municipal employees on stormwater topics (specifically outlined in the Permit) that are applicable to their job titles.</p> <p>See Section 2.6 of this report for the specific Permit references for each item of potential noncompliance.</p>	<p>1. The City had not conducted annual stormwater training for all municipal employees responsible for implementing the MS4 program (Section 2.6.1).</p> <p>See the referenced section of this report for further discussion of this issue.</p>

2.1 Stormwater Program and Stormwater Pollution Prevention Plan

Part I.E.1.a of the Permit requires Tier A municipalities to “develop, implement, and enforce a stormwater program. The program shall be designed to reduce the discharge from the municipality’s small MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Federal Act and the State Act.” The program must also meet the SBRs set forth in the Permit and may include additional optional measures in accordance with Part I.G of the Permit.

Part I.E.2.a of the Permit requires the City to prepare and implement a written SPPP that describes the City’s stormwater program and serves as the mechanism for the implementation of the SBRs. In response to the EPA Records Request, the City provided an electronic version of the City’s SPPP, which was dated December 16, 2010 ([see Appendix B](#)).

2.1.1 The City’s SPPP does not contain all of the information and items required in Attachment A of the Permit.

Part I.E.2.a states, “The SPPP shall include, at a minimum, all of the information and items identified in Attachment A.”

The City’s SPPP does not contain all of the information and items identified in Attachment A of the Permit. Specifically, Attachment A of the Permit states, “The SPPP shall identify and discuss each Statewide Basic Requirement (SBR) and best management practice (BMP) required by the

Tier A Municipal Stormwater General Permit.” The City’s SPPP does not identify and discuss SBR 9—Employee Training. The City’s SPPP utilizes the SBR template forms made available by the NJDEP; however, the SPPP did not include Form 17, which pertains to employee training. Further, the City’s employee training program is not identified or discussed in any other forms included in the City’s SPPP. Deficiencies in the City’s employee training program are further discussed in section 2.6 of this report.

Additional SPPP deficiencies were noted regarding post-construction, solids and floatable controls, and maintenance yard operations. These deficiencies are discussed within the applicable sections of this report.

2.2 Post-Construction Stormwater Management in New Development and Redevelopment

Part I.F.3 of the Permit requires the City to “implement, [sic] and enforce a program to address stormwater runoff from new development and redevelopment projects (including projects operated by the municipality itself) that disturb one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the municipality’s small MS4.”

2.2.1 The City had not implemented a formal program for ensuring adequate long-term operation and maintenance of post-construction stormwater BMPs.

Part I.F.3.a.v of the Permit requires the City to “ensure adequate long-term operation and maintenance of BMPs.” Additionally, Parts I.F.3.c.iii–iv of the Permit require the City to “ensure adequate long-term operation and maintenance of BMPs on property owned or operated by the municipality” and to “ensure adequate long-term operation and maintenance of BMPs on property *not* [emphasis added] owned or operated by the municipality [i.e., privately owned].”

The City had not implemented a formal, written program for ensuring long-term operation and maintenance (O&M) of private or public BMPs. Specifically, the City did not have an inventory of privately owned or municipally owned BMPs installed in the MS4 area, a written program or process to ensure proper O&M was being accomplished for privately and publicly owned BMPs, or records of inspections or maintenance performed on privately and publicly owned BMPs.

City representatives stated the City did not own or operate any post-construction BMPs and they did not know how many privately owned post-construction facilities were located within the MS4 area. The City provided the EPA Audit Team with an inventory of stormwater catch basins, but was unable to provide an inventory or map of stormwater BMPs located within the City’s jurisdiction.

The City had adopted a mechanism giving it authority to perform maintenance on stormwater management facilities if needed. Chapter 17 (Storm Drainage), Section 10-2 (General Maintenance) of the *Newark Zoning and Land Use Regulations* states:

“In the event that the stormwater management facility becomes a danger to public

safety or public health, or if it is in need of maintenance or repair, the City of Newark shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the Departments of Engineering and Water and Sewer Utilities. The City of Newark, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the City of Newark may immediately proceed to do so and shall impose a lien or use other remedies to collect the cost thereof from the responsible person.”

Section 10-2 of chapter 17 also requires private developers to provide for the adequate long-term O&M of BMPs. Section 10-2 of chapter 17 states, “The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.” Section 10-2 further specifies the contents of the maintenance plans and contains additional requirements relating to preventive and corrective maintenance. Similar language is also included in Title 38 chapter 10-47.j.2(k) of the City’s municipal code. The City had developed the ordinance; however, City representatives stated the City has not implemented a formal oversight program (e.g., inspection program) for enforcing the ordinance or for ensuring the long-term O&M of privately owned BMPs. They added that the City does not provide maintenance or oversight of BMPs located on private property.

2.3 Illicit Connection Elimination and MS4 Outfall Pipe Mapping

Part I.F.6 of the Permit requires the City to develop and maintain a storm sewer outfall map, an ordinance prohibiting illicit connections, and an illicit connection elimination program that meets the measureable goals and is implemented according to the timeline established in Part I.F.6.c of the Permit. City representatives stated that they have identified 17 MS4 outfalls within the City’s MS4.

HDR has been contracted to conduct the activities related to the illicit connection and outfall mapping program. Specifically, HDR conducts the City’s illicit connection inspection and elimination program, maintains and updates the City’s storm sewer outfall map, and inspects outfalls for overall condition and river/stream bank scouring. As previously mentioned, specific details regarding the scope of work for each task are provided in HDR’s contract with the City (see to Appendix D, Exhibit 1 for pertinent excerpts).

HDR representatives explained that all City outfalls were mapped from 2006 to 2007. They further explained that the mapping exercise took longer than expected due to old infrastructure and areas in the City that contained infrastructure for both the combined and separate sewer systems, as well as multiple entities with their own MS4 permits located around the City. HDR maintains the outfall database on a geographic information system-based (GIS-based) map. The EPA Audit Team viewed the GIS map containing the location of outfalls the City had confirmed to be within its jurisdiction, receiving surface water bodies, and the boundaries of the MS4 and combined sewer areas of the City. The map appeared to be representative of the MS4 area of the City.

The City had adopted an ordinance prohibiting illicit connections to the City's MS4. Title 32, chapter 1-2.a of the City's municipal code states, "No person shall discharge or cause to be discharged through an illicit connection to the municipal separate storm sewer system operated by the City of Newark any domestic waste, non-contact cooling water, process wastewater, or other industrial waste (other than stormwater)."

The City utilizes the procedures in Attachment B of the Permit for detecting, investigating, and eliminating illicit connections. The City conducts inspections of each outfall once per year and documents the inspections on its "Newark Outfall Reconnaissance Inventory/Sample Collection Field Sheet." The City observes physical indicators (e.g., odor, color, turbidity, floatables) and uses field instruments to test for quantitative parameters (e.g., flow, temperature, pH, conductivity, surfactants, fluoride). The City notes any stream bank scouring during outfall inspections. If a flow is detected that warrants further investigation, the City attempts to trace it to its source by removing manhole covers to observe flow pathways.

The City provided a summary of an illicit connection investigation it had conducted in response to a flow containing "wash water." The HDR representatives explained that foam and a strong laundry detergent odor was observed at storm water outfall VD-007 during a dry weather outfall screening exercise in February 2012. The discharge was sampled and analyzed. City staff traced the soapy water to a laundromat and conducted a dye test to verify the origin of the soapy water. They added that the laundromat had recently had some plumbing work done and a pipe was incorrectly directed to the storm drain. The City contacted the laundromat and the soapy water was eliminated from outfall VD-007.

Part of illicit connection detection and elimination involves receiving and responding to citizen complaints. The City employs a customer service representative who receives calls and dispatches complaints to the appropriate City personnel. Refer to section 2.7 for an area of concern related to the City's complaint response mechanism.

According to the latest annual report available at the time of the inspection (reporting period January 1, 2013–December 1, 2013), the City had inspected 17 outfalls during the year and determined that none of the outfall pipes inspected had an illicit connection. Refer to section 2.7 of this report for an area of concern related to the screening of outfalls from the City that discharge into other jurisdictions.

2.4 Solids and Floatable Control

Part I.F.7 of the Permit requires the City to conduct monthly street sweeping, perform storm drain inlet retrofitting and proper stormwater facility maintenance, implement a catch basin inspection and cleaning program, and implement an outfall-pipe stream-scouring remediation program.

The City's Division of Sanitation is responsible for weekly street sweeping. The City performs some street sweeping itself, but primarily relies on a contractor to complete street sweeping requirements. To ensure the contractor is performing the work, City sanitation staff inspect the routes swept by the contractor on a daily basis. The contractor is responsible for the disposal of

all material collected from its street sweepers; the contractor also provides reports containing the miles swept and weight of materials collected to the City. The City temporarily stores material collected from its street sweepers at its salt dome storage facility and ultimately disposes of the material at a landfill.

According to the latest annual report available at the time of the inspection (reporting period January 1, 2013–December 31, 2013), the City had swept 62,066 miles of street and had collected a total amount of 5,180 tons of material during that year. The annual report does not distinguish between the City's MS4 area and the combined sewer areas when reporting how many miles were swept and the amount of materials collected.

City representatives stated the City had retrofitted approximately 95 percent of its storm drain inlets since 1995 when the City adopted requirements relating to “Bicycle Safe” storm drain inlet grates. In regards to stormwater facility maintenance, City representative stated the City does not own or operate stormwater facilities for the retention or treatment of stormwater other than catch basins. An area of potential noncompliance related to its catch basin cleaning and inspection program is discussed in section 2.4.1.

2.4.1 The City had not implemented a formal MS4 catch basin inspection and cleaning program.

Part I.F.7.d.i of the Permit states the City “shall inspect all municipally owned and operated catch basins for accumulated sediment, trash, and debris; and clean those basins to remove sediment, trash, or debris (if any observed during inspection). Tier A Municipalities with:

- less than 5,000 municipally owned and operated catch basins shall annually inspect and (to the extent noted above) clean at least 1,000 catch basins, or as many catch basins as the municipality owns and operates.
- 5,000 or more municipally owned and operated catch basins shall inspect and (to the extent noted above) clean all catch basins by February 28, 2014.”

Form 13–Stormwater Facility Maintenance of the City’s SPPP states, “Catch basins are cleaned as needed,” but it does not describe a formal catch basin inspection and cleaning program.

The City had not implemented a formal catch basin inspection and cleaning program. The City maintained an inventory of all catch basins cleaned per year; however, the City did not have a structured approach to ensure the required amount of catch basins in the MS4 area were being inspected and cleaned as prescribed by the Permit. Specifically, City representatives explained that routine catch basin cleaning activities were conducted based on institutional knowledge of flood prone areas within the City, regardless of whether they were located in combined or separate areas. City representatives stated that some catch basins were cleaned routinely, while some were cleaned based on citizen complaints.

The City did not have an inspection schedule to make sure all of the MS4 catch basins were being inspected and cleaned (if necessary) according to the frequency prescribed by the Permit. Further, City representatives were unsure of exactly how many catch basins were connected to

MS4 outfalls, and the City did not differentiate whether catch basins were connected to the MS4 or to the combined sewer system when documenting inspection and maintenance activities.

The City maintained a catch basin cleaning inventory using a Microsoft Excel spreadsheet (see [Appendix D, Exhibit 3](#)). The spreadsheet contains the number of catch basins inspected and cleaned per year. The spreadsheet provides the general location of the catch basin (e.g., a street intersection and which quadrant of the intersection) but does not distinguish the catch basins as being part of the MS4 or part of the combined system.

According to the *Newark Sewer System Operation and Maintenance Plan and Manual* (dated July 2014) the City of Newark's collection system has approximately 7,650 total catch basins (combined and separate), 1,810 of which are connected to the MS4. Form 13 – Stormwater Facility Maintenance of the City's SPPP states there are 1,732 catch basins connected to the City's MS4. According to the data provided, the City had not inspected the annually required amount of at least 1,000 catch basins for permittees with less than 5,000 MS4 catch basins. Table 2 provides a summary of the catch basins cleaned and inspected since 2009.

Table 2. Summary of the City's Catch Basin Inspection and Cleaning Data (2009–2014)*

Year	Number Inspected	Number Cleaned
2014	429	427
2013	498	498
2012	641	632
2011	381	381
2010	344	324
2009	305	303

*The quantities represented in this table include catch basins in both combined and separate sewer areas.

During the onsite audit, HDR stated they had an inventory of catch basins located in the City and had uploaded the information to ArcGIS software; however, the City was not using this information. City representatives stated the City uses paper catch basin maps, and the City does not use the updated ArcGIS catch basin maps created by HDR. HDR further stated they inspected 999 catch basins in 2014; however, the inspections focused on catch basin integrity and labeling. They added that the City's inventory does not include these catch basin inspections conducted by HDR.

On April 29, 2015, the EPA Audit Team viewed an MS4 catch basin located near the northeast corner of Wilson Avenue and Paris Street and observed that it was covered with trash and debris (see [Appendix E, Photographs 1 and 2](#)). City representatives stated they were unsure when or if the catch basin had been included in the City-provided cleaning inventory. They were unsure if the catch basin had ever been cleaned, or when/if it would be cleaned in the future.

2.5 Maintenance Yard Operations (including maintenance activities at ancillary operations)

Part I.F.8 of the Permit requires the City to store salt and other de-icing materials in a permanent structure, to manage any equipment and vehicle washing activities so that there are no

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unpermitted discharges of wash water to surface or ground waters, and to implement SOPs that include the required practices listed in Attachment D of the Permit.

The City stores all salt for de-icing purposes at its salt storage dome, which is located within the City's combined sewer area. City representatives stated the City does not perform vehicle washing activities at any municipal facilities, and the City takes all City-owned vehicles to private facilities for washing.

The City identified one municipal maintenance yard that was located within its MS4 area: the Department of Engineering's Division of Motors Facility located at 233 Wilson Avenue, Newark, New Jersey (hereinafter, Facility). The City stores vehicles and performs all City-owned vehicle repair and maintenance activities at the Facility. As part of the onsite audit, the EPA Audit Team conducted a site visit to the Facility to assess the City's implementation of pollution prevention and good housekeeping practices. Observations related to this visit are described below.

2.5.1 The City had not implemented standard operating procedures for the required practices listed in Attachment D of the Permit.

Part I.F.8.c of the Permit requires the City to "implement standard operating procedures, which include the required practices listed in Attachment D, for each of the following activities:

- Vehicle fueling and receiving of bulk fuel deliveries;
- Vehicle maintenance and repair activities; and
- Good housekeeping practices for all materials or machinery listed in the Inventory Requirements for Municipal Maintenance Yard Operations prepared in accordance with Attachment D."

Form 67 – Standard Operating Procedures of the City's SPPP (note: the NJDEP-provided form for Standard Operating Procedures is actually numbered as "Form 16") states; as of April 17, 2007, "An SOP for Good Housekeeping Practices is in place. City employees were trained through a video program in Feb. and Mar. 2006."

The City had not implemented SOPs for the practices listed in Attachment D of the Permit. According to discussions with Division of Motors employees who worked at the Facility, including the Division of Motors Manager, employees and management were unaware of any SOPs for the Facility related to stormwater pollution prevention or general good housekeeping. Additionally, the Division of Motors Manager was unaware that the Facility was located within the MS4 area. Later in the audit process, City representatives from the DWSU stated they believed a stormwater-related SOP for the Facility existed, but they were unsure where it was located, and the City was unable to provide it.

City representatives stated Division of Motors employees had not received annual stormwater training. Refer to section 2.6 of this report for further details.

2.5.2 The City had not developed an inventory for municipal maintenance yard operations.

Section A of Attachment D of the Permit requires the City to develop and maintain an inventory for municipal maintenance yard operations, which includes “A list to be made part of the SPPP of general categories of all materials or machinery located at the municipal maintenance yard, which could be a source of pollutants in a stormwater discharge. The materials in question include, but are not limited to: raw materials; intermediate products; final products; waste materials; by-products; machinery and fuels; and lubricants, solvents, and detergents that are related to the municipal maintenance yard operations or ancillary operations. Materials or machinery that are not exposed to stormwater or that are not located at the municipal maintenance yard or related to its operations do not need to be included.”

The City had not developed an inventory as described above, and the required information was not included in the City’s SPPP for the Department of Engineering’s Division of Motors Facility. Form 67 – Standard Operating Procedures of the City’s SPPP states, “Attach inventory list required by Attachment of the permit”; however, no such inventory was attached. As stated previously, the Division of Motors Manager was unaware that the Facility was located within the MS4 area.

2.5.3 The City had not implemented a municipal facility inspection program.

Section F of Attachment D of the Permit states, “Inspections of all Municipal Maintenance Yard Operations shall be conducted regularly.” The City’s SPPP does not explain the City’s approach to inspecting municipal facilities located within the MS4. The City’s SPPP only provides the City’s approach to inspecting its salt storage dome, which is located in the City’s combined sewer area.

Section D of Attachment D of the Permit requires the City to “conduct cleanups of any spills or liquids or dry materials immediately after discovery.” City representatives stated that the City did not have a formal inspection program for municipal facilities. Facility staff stated they clean up spills in the Facility with kitty litter, but no formal process was in place to inspect the Facility. The EPA Audit Team visited the City’s Department of Engineering Division of Motors Facility as part of the audit, and observed numerous deficiencies related to pollution prevention and good housekeeping.

Department of Engineering Division of Motors Facility

As part of the audit, the EPA Audit Team conducted a site visit at the Department of Engineering’s Division of Motors Facility. The Facility was located in the City’s MS4 area at 233 Wilson Avenue in Newark, New Jersey. The purpose of the site visit was to document site conditions and to assess the City’s pollution prevention and good housekeeping practices. The EPA Audit Team identified areas of the site lacking BMPs and in need of housekeeping as demonstrated in the observations described below:

- Areas of staining that appeared to be indicative of petroleum products were observed on an impervious surface outside the Facility on Paris Street. Facility representatives explained the stains were oil or hydraulic fluid leaks from City vehicles stored outside of the Facility (see Appendix E, Photographs 4 and 5).

- Accumulated trash and debris was observed adjacent to and within a catch basin inlet west of the Facility on Paris Street. Used tires were also observed adjacent to the catch basin (see Appendix E, Photographs 1 and 2).
- A slick and dark material, indicative of motor oil, was observed on the ground surface inside of the Facility's west entrance. Vehicle tracking was observed from the Facility's west entrance onto Paris Street (see Appendix E, Photographs 6 and 7).
- Multiple 55-gallon drums containing used oil were stored outside, on the east side of the Facility, without coverage or secondary containment. A leak was observed from one of the drums (see Appendix E, Photographs 8 through 11). According to the Division of Motors Manager, the City's Division of Sanitation periodically pumps the used oil out of the drums. He added that he would look at alternatives for storing the drums containing used oil, including storing the drums inside. Secondary containment pallets were observed in the vicinity of the 55-gallon drums of used oil; however, they were not being used at the time of the audit (see Appendix E, Photograph 12).
- A roll-out dumpster containing scrap metal (i.e., used vehicle parts) and used containers of fluids such as engine coolant was located on the east side of the Facility, near the Facility's parking lot. The dumpster was uncovered and leaking onto an impervious surface (see Appendix E, Photographs 13 through 16). Stormwater from the area appeared to lead to a storm drain located approximately 42 feet southeast of the roll-out dumpster. Stormwater from the east side of the Facility appeared to also drain to catch basins located at the intersection of Amsterdam Street and Wilson Avenue. Facility staff were unsure where the parking lot storm drain inlet led (see Appendix E, Photographs 17 through 20). The catch basin located on the northwest corner of Amsterdam Street/Avenue K and Wilson Avenue was labeled with the phrase "Dump No Waste, Drains to Waterways" (see Appendix E, Photograph 21).
- A floor drain was observed in the automotive repair area of the Facility (see Appendix E, Photograph 22). A floor drain was also observed along the west entrance of the Facility near Paris Street. The Facility managers were unsure where the Facility's floor drains led. The City was unable to provide a map of the sanitary and stormwater flow at the Facility.

2.6 Employee Training

Part I.F.9.a of the Permit requires the City to "conduct annual employee training to educate all municipal employees on those stormwater topics which are applicable to their job title."

The Permit states that, at a minimum, annual employee training should include the following topics: waste disposal, municipal ordinances, yard waste collection program (if applicable), illicit connection elimination and outfall pipe mapping, monthly street sweeping schedule in predominantly commercial areas, stormwater facility maintenance, outfall-pipe stream-scouring remediation, maintenance yard operations (including ancillary operations), and construction activity/post-construction stormwater management in new development and redevelopment. As discussed in section 2.1.1 of this report, the City's SPPP does not identify or discuss SBR 9 – Employee Training. The City's SPPP does not include Form 17, which pertains to employee

training. Further, the City's employee training program is not identified or discussed in any other forms included in the City's SPPP.

2.6.1 The City had not conducted annual stormwater training for all municipal employees responsible for implementing the MS4 program.

Part I.F.9.a of the Permit requires the City to "conduct annual employee training to educate all municipal employees on those stormwater topics which are applicable to their job title."

At the time of the inspection, the City had not conducted annual stormwater training for all municipal employees responsible for implementing the City's MS4 program. The City had conducted stormwater training for select City employees in the DWSU. The City provided documentation of "Municipal Stormwater Management Training" conducted on December 23, 2014 (see Appendix D, Exhibit 4). Municipal employees from other City departments/divisions were not listed on the attendance sheet. One of the two HDR representatives responsible for the implementation of the City's illicit connection inspection and elimination program was listed on the attendance sheet. Discussions with City representatives confirmed this was the only training session conducted for City employees during 2014. It also confirmed that only select municipal employees from the City's DWSU attended the training; employees from other City departments such as the Department of Engineering had not attended the training, even though they are involved in the implementation of the City's MS4 program.

Discussions with employees in the City's Department of Engineering's Division of Motors indicated that these employees had not received annual stormwater training. Specifically, the Division of Motors Manager stated he had not received annual stormwater training. During the site visit at the Division of Motors Facility, discussed in Section 2.5 of this report, a second Division of Motors employee indicated he had not received annual stormwater training. The employee stated he had received Mechanical Educational Association training, but had not received stormwater training.

2.7 Areas of Concern

In addition to the observations of potential noncompliance described above, the EPA Audit Team noted three areas of concern during the audit.

2.7.1 The City had not updated its municipal stormwater management plan during the current permit term.

Part I.F.3.a.i of the Permit requires the City to "adopt and reexamine a municipal stormwater management plan (or adopt amendments to an existing municipal stormwater management plan) in accordance with N.J.A.C. 7:8-4."

N.J.A.C. 7:8-4.3(a) states, "A municipality shall adopt a municipal stormwater management plan as an integral part of its master plan and official map." The *Tier A Municipal Stormwater Guidance Document – NJPDES General Permit No NJ0141852*¹ (Tier A Guidance Document)

¹ The *Tier A Municipal Stormwater Guidance Document – NJPDES General Permit No NJ0141852* was originally
Audit Dates: April 29 and 30, 2015

states, “the municipal stormwater management plan documents the strategy of a specific municipality to address the impacts of stormwater runoff from new development and redevelopment projects, and provides the structure and process for addressing such impacts.”

The EPA Audit Team requested a copy of the City’s current *Municipal Stormwater Management Plan* (SMP). The City provided an SMP dated August 2006. The effective date of permit authorization is March 1, 2009, meaning the SMP has not been updated since the current version of the permit was issued. The SMP needs to be reexamined and likely updated to verify that all requirements of the Permit and state regulations are being met. HDR representatives stated the City was planning to update the SMP sometime in 2015; however, no timeline had been set for completion.

2.7.2 The City does not inspect MS4 outfalls that discharge from the City to Branch City Brook.

As described in section 2.3 of this report, the City’s consultant, HDR, conducts inspections at City outfalls that discharge to surface waters. However, the City does not conduct outfall inspections at the City’s MS4 discharge points into the Essex County MS4, which ultimately discharge into Branch City Brook, located on the north side of the City in Branch Brook Park. City representatives explained the outlet pipes from this drainage area are located on property owned by Essex County, and the County is responsible for conducting outfall screening at these locations. The City does not conduct any outfall screening or inspections at the point where the City’s conveyance discharges into the County-owned MS4. The EPA Audit Team did not view these outfalls as a component of the audit.

2.7.3 The City had not addressed a potential illicit connection to the City’s MS4

The City had not addressed a potential illicit connection to the MS4. As described in Section 2.3 of this report, the City attempts to trace illicit connections to its source by removing manhole covers to observe flow pathways. During the inspection, the EPA Audit Team visited outfalls that discharged from the City’s MS4. One such outfall, identified by the City as PR-027, is located near the intersection of Raymond Boulevard and Mott Street. At the time of the inspection, PR-027 was discharging water into the Passaic River (see Appendix E, Photographs 23 and 24). According to an *Outfall Reconnaissance Inventory/Sample Collection Field Sheet* for PR-027 dated October 3, 2014, the City had previously identified a dry weather flow from the outfall (see Appendix D, Exhibit 5). According to the field sheet provided, no physical indicators (i.e. odor, color, turbidity, and floatables) were present and a sample was collected for lab analysis. The City’s contractor HDR stated the discharge had stopped by the time a follow-up investigation was conducted the following day. HDR further stated the discharge was tested and contained fluoride, an indication that the discharge was from a potable water source. No additional information or documentation (e.g. lab analysis) was provided by the City regarding the dry weather flow observed on October 3, 2014.

issued by NJDEP in April 2004, and contains information for Tier A municipalities on meeting the requirements of NJPDES General Permit No. NJ0141852. The document can be accessed online at http://www.state.nj.us/dep/dwq/tier_a_guidance.htm.

The EPA Audit Team observed City staff attempt to trace the observed flow from PR-027 to its source. City staff provided a paper map of the City's combined sewer system, and identified three possible streets where the discharge could originate. The City staff removed multiple manholes to try and observe flow, but were unable to determine the source to the MS4. The Public Works Superintendent later informed the EPA Audit Team that a water main leak was observed near Mott Street, and the source of the water at PR-027 was likely from the water main leak. Based on the documentation provided, the EPA Audit Team could not determine if the City had adequately investigated the potential illicit connection observed at the time of the audit.

2.7.4 The City does not distinguish in which portion of the sewer system—MS4 or combined sewer—work is completed or issues occur.

The City does not distinguish in which areas (separate or combined sewer) work is being completed in the City. City representatives stated the City customer service representative receives calls and dispatches complaints to the appropriate City personnel. The City does not categorize complaints by the type of sewer system (the MS4 or the combined sewer system). For example, the customer service representative did not utilize a map or other tools to determine which issues were located in the MS4 area and which were located in the combined sewer system area. Further, the City's "Sewer Complaint Log" did not designate the complaint response activities as being in either the MS4 or the combined sewer system. All documentation of complaint receipt and response activities (e.g., the "Sewer Complaint Log") was filed according to street address; the City does not maintain separate file systems for MS4-related activities and combined sewer system-related activities.

The City has a complicated infrastructure, with many areas in the City containing both separate and combined sewer assets. For example, in many cases it was difficult to determine which catch basins were connected to MS4 outfalls, and which were connected to the combined sewer, which typically conveys flow to the wastewater treatment plant. Since the City does not track in which system work is completed, it is difficult to determine if the City is meeting its Permit requirements, particularly when the submitted MS4 Annual Reports include combined sewer components. Further, being able to identify whether an illicit connection is occurring near an MS4 asset versus a combined sewer asset would allow the City to better assess the immediate threats to water quality.